

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9
10 GEORGE HARRIS,

11 Plaintiff,

12 v.

13 AIR TRANSPORT DISTRICT 143
14 INTERNATIONAL ASSOCIATION OF
15 MACHINISTS & AEROSPACE
16 WORKERS and LOCAL LODGE 1040
17 INTERNATIONAL ASSOCIATION OF
18 MACHINISTS & AEROSPACE
19 WORKERS,

Defendants.

CASE NO. C05-1824JLR
ORDER

20 **I. INTRODUCTION**

21 This matter comes before the court on a motion from the Defendant trade unions
22 (Dkt. # 12) to dismiss Plaintiff's claims. Neither party has requested oral argument, and
23 the court finds this motion suitable for disposition based on the parties' briefing and
24 accompanying declarations. For the reasons stated below, the court GRANTS the motion
25 to dismiss.
26

II. BACKGROUND

Plaintiff George Harris, an African American man, works as a baggage handler for Northwest Airlines (“Northwest”). In April or May of 2001, Northwest fired Mr. Harris following allegations that he brought a gun and ammunition onto company premises, that he threatened coworkers, and that he provided misleading information during the company’s investigation. Harris v. Air Transp. Dist. 143, Int’l Ass’n Machinists & Aerospace Workers, No. 03-cv-05261-RJB (“Prior Order”), at 4 (W.D. Wash. Mar. 15, 2004) (Ex. B to Harris Decl.). On November 5, 2002, after eighteen months of pursuing a grievance, Mr. Harris accepted a Last Chance Agreement (“Agreement”) to settle his claim against Northwest. As a result, Northwest reinstated Mr. Harris to his position, but he received no back pay for the time he was out of work. Id. at 8.

Mr. Harris filed his initial action against these Defendants in Pierce County Superior Court on April 8, 2003, alleging that Defendants failed to represent him fairly in his grievance against Northwest, and that he had no choice but to accept the Agreement because the union was not prepared to represent him at the impending arbitration. The union removed the case to federal court on May 16, 2003, and Judge Bryan dismissed the case on summary judgment. *Id.* at 2, 19. The initial suit directly disposed of allegations that the union's representation was arbitrary, discriminatory, and in bad faith, due at least in part to personal and political hostility between Mr. Harris and the union over a prior EEOC complaint of racial discrimination. *Id.*

Mr. Harris filed this suit on November 2, 2005, alleging that race and retaliation motivated the union's deficient representation.¹ He sought relief under Title VII of the

¹ The court has considered both Mr. Harris's first and second amended complaints (Dkt. ## 5, 6) as one document for the purpose of deciding this motion.

1 Civil Rights Act of 1964 and the Washington Law Against Discrimination. To
2 demonstrate discriminatory treatment, he alleges that a similarly situated Caucasian
3 employee who allegedly assaulted another employee received better representation than
4 he did.

Defendants now move the court to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6) (“Rule 12(b)(6)”) on the theory that Mr. Harris’s prior action bars the instant action under res judicata principles.²

III. ANALYSIS

Res judicata is an affirmative defense that is not specifically enumerated among those defenses parties may raise by motion under Rule 12(b). However, where the defense accepts the factual allegations of the complaint as true and does not raise additional facts, the court may consider res judicata in a Rule 12(b)(6) motion. Scott v. Kuhlmann, 746 F.2d 1377, 1378 (9th Cir. 1983). When considering a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the court construes the complaint in the light most favorable to the non-moving party. Osborne v. Dist. Attorney's Office for Third Judicial Dist., 423 F.3d 1050, 1053 (9th Cir. 2005). The court must accept all well-pleaded facts as true and draw all reasonable inferences in favor of the plaintiff. Wyler Summit P'ship v. Turner Broad. Sys., Inc., 135 F.3d 658, 661 (9th Cir. 1998). Dismissal for failure to state a claim should not be granted “unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Id. (internal quotations and citations omitted). The court’s review of the record

² Defendants also argue that the statute of limitations has run on Mr. Harris's claim. The court need not reach this issue.

1 on a Rule 12(b)(6) motion is limited to the complaint and documents referenced within
2 the complaint. Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994).

3 Res judicata is a term that describes both claim preclusion, as in the present case,
4 and issue preclusion, otherwise known as collateral estoppel. McClain v. Apodaca, 793
5 F.2d 1031, 1033 (9th Cir. 1986). Claim preclusion “treats a judgment, once rendered, as
6 the full measure of relief to be accorded between the same parties on the same claim or
7 cause of action.” Id. (internal quotations omitted). Claim preclusion bars “all grounds
8 for recovery which could have been asserted, whether they were or not, in a prior suit
9 between the same parties . . . on the same cause of action.” McClain, 793 F.2d at 1033.
10 Claim preclusion bars a second action when it presents claims that are identical to those
11 made in a first action between the same parties (or their privies) that came to a final
12 judgment on its merits. Owens v. Kaiser Foundation Health Plan, Inc., 244 F.3d 708, 713
13 (9th Cir. 2001). In the present case, there is no dispute that the parties are the same and
14 that the summary judgment in Mr. Harris’s prior suit was a final judgment on the merits.
15 The sole issue is whether Hr. Harris’s claim in this action is identical to his claim in the
16 prior action.

17 Two claims may be identical for res judicata purposes even where the second case
18 contains additional facts or legal theories not asserted in the first. See Costantini v. Trans
19 World Airlines, 681 F.2d 1199, 1201 (9th Cir. 1982). The Ninth Circuit considers four
20 factors to determine whether two claims are identical: (1) whether the rights or interests
21 established in the prior judgment would be destroyed or impaired by prosecution of the
22 second action, (2) whether substantially the same evidence is presented, (3) whether the
23 two actions address the infringement of the same right, and (4) whether the second cause
24 of action involves “the same transactional nucleus of facts.” Id. at 1202-03. Of these
25 factors, the last is the most significant. Id.

1 Applying this standard, the Ninth Circuit in Owens upheld a res judicata dismissal
2 under circumstances similar to the instant case. 244 F.3d at 715. In that case, terminated
3 employees brought claims for breach of contract and breach of the duty of fair
4 representation in an original action, and then added a Title VII claim based on race in a
5 second action. The court held that, although there was no Title VII claim in the prior
6 action, the plaintiffs could have brought one, and that res judicata therefore barred the
7 later claim. Id. The court reached its holding even though procedural requirements
8 barred the plaintiffs from bringing the Title VII claim in the prior action. Id. at 714. The
9 court reasoned that both suits addressed the racially discriminatory motivation of the
10 employer. Id.

Just as in Owens, Mr. Harris did not formally bring a discrimination claim in his prior action, but he could have. Mr. Harris testified in the prior action that he suspected that his race motivated the Defendants' allegedly poor representation of him in his grievance. In addition, Mr. Harris's race-based retaliation claim in his prior action reveals that he suspected racial motivation, and also shows conclusively that he could have brought his retaliation claims in the prior action.³ In this action, as in his prior action, the nucleus of facts centers on the union's representation of Mr. Harris and the reasons the representation was inadequate.

21 The court finds no basis to conclude that Mr. Harris was unable to bring his
22 present claim in his prior suit. Mr. Harris states that he could not have brought the claim
23 because he did not know about the similarly situated Caucasian employee at the time his
24 first action was pending. The court accepts the truth of this assertion. The issue,
25

³ The court treats Mr. Harris's retaliation claim in the initial action as if he had not actually brought it because Judge Bryan found that Mr. Harris had abandoned this claim as a separate theory for recovery. Prior Order at 18.

1 however, is not whether Mr. Harris had actual knowledge of the Caucasian employee, but
2 whether he could have learned the information through diligent discovery. The assault to
3 which Mr. Harris refers occurred on April 14, 2002, a year after his own termination and
4 a year before he filed his original action against the union. According to Mr. Harris,
5 there is an EEOC complaint on file regarding the incident. There is no reason for the
6 court to infer that the "new" evidence in this action would not have been available if Mr.
7 Harris had pursued appropriate discovery in his prior action.

9 **IV. CONCLUSION**

10 For the reasons stated above, the court GRANTS Defendants' motion to dismiss
11 (Dkt. # 12). The court directs the clerk to enter judgment for Defendants.

12 Dated this 27th day of April, 2006.

13
14 
15 _____
16 JAMES L. ROBART
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28